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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,168	01/13/2004	Basia Kaminski	1510-4	3560

7590
JOHN MAIER, III
666 AARON COURT
KINGSTON, NY 12401

04/26/2007

EXAMINER

VAKILI, ZOHREH

ART UNIT	PAPER NUMBER
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1614

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p align="center">10/757,168</p>	<p>Applicant(s)</p> <p align="center">KAMINSKI, BASIA</p>	
	<p>Examiner</p> <p align="center">Zohreh Vakili</p>	<p>Art Unit</p> <p align="center">1614</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-11,13-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-11,13-16 and 18 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-7, 9-11, 13-16, & 18 are presented for examination.

Applicant's Amendment filed September 21, 2006 has been received and entered into the present application. Accordingly, claims 1-7, 9-11, 13-16, & 18 are currently amended and claims 8, 12, 17, 19, & 20 are cancelled. Claims 1-7, 9-11, 13-16, & 18 are pending and are herein examined on the merits.

Applicant's arguments, filed September 21, 2006, have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

Amendment Informalities

Claim 16 has been mentioned twice in the claim listing, once as amended, and once as deleted. Applicant is requested to clarify the status of claim 16.

Claim Objections (New Grounds of Objection)

Claim 11 is objected to because of the following informalities: the word "flavoring" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 remains rejected under 35 U.S.C. 112, second paragraph, as set forth at pages 2-3 of the previous Office Action dated April 19, 2006. Applicant has not amended the claim to clarify of what the percentage by weight is of and provides no remarks in response to the rejection and that the rejection is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-11, 13-16, & 18 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeer (US 5624906) taken with Barry et al (US 6365130), already of record, for the reasons of record set forth at pages 3-5 of the previous Office Action dated April 19, 2006.

Vermeer teaches dentifrices (column 2) with improved foam, viscosity, clarity and good taste (see the abstract) comprising sodium benzoate in an amount of from 0-5% (in claims 1-20; see col 36 lines 25-30), sodium bicarbonate present in amounts generally from 0-65% (see col 17 lines 55-60) but more specifically present in an amount of 0.5 and 1.0% in Example 104 col 87, calcium carbonate present in an amount of 0-65% (see col 17 lines 55-60), coconut fatty acid (absent facts to the contrary) is a potassium (among others) salt of coconut fatty acids, i. e., potassium

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cocoate (see Vermeer which teaches that it is known to use potassium cocoate in toothpaste), and sodium lauryl sulfate present in an amount of 1-5.4% as shown in Examples 109-115 col 89 as well as coconut derivative surfactants such as 3-(cocodimethylsulfonio)-1-propane sulfonate and the cocoamide DEA of Example 86 col 71 which are known to have the same functional properties as coco-sulfates, stearyl alcohol known as octadecanol and titanium dioxide both of which are present in an amount from 0-5% (claim 18; see col 40 lines 32-55), ammoniated glycyrrhizin (claim 18; col 37 line 36) and binders and cothickeners present in the amount of 0-30% which are functional equivalents to aluminum starch octenylsuccinate (claim 18; see col 18 lines 44-end). The dentifrices also contain foam forming agents (e. g., column 3) abrasive/polishing agents (column 17) which absent factual evidence to the contrary are also cleansers (e. g., sodium bicarbonate, see column 17, lines 55-60); glycerin used to add body to a mouthwash or dental rinse composition and retain moisture in a dentifrice composition, humectants at columns 17-18 (water absorption materials); soaps and particularly the sodium, calcium, and potassium salts of fatty acids include stearic acid (e. g., sodium stearate) at column 19 which is the same sodium stearate the claims refer to as tensile strength promoting vegetal-based sodium stearate; and coconut fatty acid (absent facts to the contrary) is a potassium (among others) salt of coconut fatty acids, i. e., potassium cocoate (see Vermeer which teaches that it is known to use potassium cocoate in toothpaste). In addition Vermeer teaches anionic surfactants (see at least column 21+) where sodium coconut monoethanolamide ether sulfate is disclosed (absent fact to contrary, it would have been the same as the recited sodium

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coconut-sulfate). Furthermore, column 41 teaches using sodium benzoate among others as an antimicrobial in the composition. Also added into the composition are flavorants (column 36-37); colorants (column 38); hydrolyzed wheat gluten (column 40); and whiteners (column 90, example 110). Vermeer further introduces examples of alkali metal halides (salts) useful in this invention include sodium chloride, potassium chloride, etc. Preferred alkali metal halides are sodium chloride. Sodium chloride and sea salt which sodium and chloride subsequently became the most abundant constituents of sea salt, serve as an electrolyte and contributes to the overall flavor (col. 36, line 50).

Vermeer also discloses examples of abrasive polishing agents

Examples of abrasive polishing agents (body agents) useful in the dentifrice compositions of the present invention which function to remove debris and residual stains from the teeth as well as polish the tooth surface include calcium carbonate, precipitated calcium carbonate, light calcium carbonate, medium calcium carbonate, dense calcium carbonate, extra dense calcium carbonate, sodium carbonate, sodium bicarbonate (baking soda), potassium carbonate, potassium bicarbonate, anhydrous calcium phosphate, dicalcium phosphate, dibasic calcium phosphate dihydrate, tribasic calcium phosphate, sodium phosphate, potassium phosphate, calcium pyrophosphate, insoluble sodium metaphosphate, disodium orthophosphate, dibasic sodium phosphate, magnesium hydroxide, magnesium carbonate, magnesium silicate, magnesium trisilicate, trimagnesium phosphate, monomagnesium phosphate,

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magnesium oxide, stannic oxide, zinc oxide, chalk, extra light chalk, light chalk, medium chalk, course chalk, bentonite, flour of pumice, α -alumina trihydrate, levigated alumina, hydrated alumina, alumina aerogel, gelatinous alumina, aluminum silicate, calcined aluminum silicate, zirconium silicate, hydroxyapatite, crosslinked urea-formaldehyde resin, crosslinked melamine-formaldehyde resin, polymethacrylate, polymethylmethacrylate, polystyrene, powdered polyethylene, silica gel (hydrated silica), dehydrated silica gel (silica), silica precipitates, silica xerogel, silica hydrogels, silica pyrogel, silica aerogel and mixtures thereof. The average particle size of an abrasive polishing agent is from about 1 μm to about 20 μm , preferably from about 3 μm to about 12 μm . Preferred abrasive polishing agents include the silicas, sodium bicarbonate (baking soda), sodium carbonate, dicalcium phosphate, dibasic calcium phosphate dihydrate, tribasic calcium phosphate, sodium phosphate, calcium carbonate, α -alumina trihydrate and mixtures thereof. Most highly preferred abrasive polishing agents are hydrated silica and sodium bicarbonate. Typical levels of abrasive polishing agents are from about 0% to about 65% by weight of the composition (see col. 17, lines 20-59). Vermeer does not recite a dentifrice comprising wax.

Barry et al. teaches dentifrices comprising wax, such as beeswax (claim 18; see col. 8 line 32). Barry also discloses examples of suitable flavorants include flavoring oils, e.g., oils of spearmint, peppermint (also known by its botanical name:

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Mentha piperita), wintergreen, sassafras, clove, sage, anise, eucalyptus, marjoram, cinnamon, lemon, and orange, and methyl salicylate, and the like (claims 9 & 18; see col. 9, lines 53-57).

One of ordinary skill in the art would have been motivated to combine Vermeer with Barry et al. and as combined teach and suggest the invention as claimed. One of ordinary skill in the art would have been motivated to combine Vermeer with Barry et al. because both are directed to dental compositions. Moreover, Barry et al. cite Vermeer as a reference. Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and was as a whole, *prima facie* obvious.

In view of the cancellation of claims 8, 12, 17, 19, & 20, the rejection under 35 U.S.C. 103(a) renders such rejection moot as applied to such claims.

Applicant's amendments and remarks have been carefully considered in their entirety, but fail to be persuasive in establishing error in the propriety of the present rejection.

Applicant in his remarks argues that the specific compositions as claimed are not specifically shown and the presence of an ingredient in one patent with other ingredients in another patent does not make a new distinctive combination, even if some of the same ingredients are used, obvious. Applicant is reminded that the obviousness rejection is not an anticipation rejection. Vermeer clearly teaches all the components of the claimed invention in a dentifrice composition with the exception of using wax and peppermint oil (Mentha piperita oil) as flavorant, which are taught by

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Barry et al. In obviousness rejection a combination of references is used, and the references are relied upon in combination and are not meant to be considered separately as in a vacuum. It is the combination of all of the cited and relied upon references that make up the state of the art with regard to the claimed invention. Applicant's claimed invention fails to patentably distinguish over the state of the art represented by the combination of the cited references. *In re Young*, 403 F.2d 754, 159 USPQ 725 (CCPA 1968); *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Moreover, it is noted that rejections under 35 U.S.C. 103(a) are based on combinations of references, where the secondary references are cited to reconcile the deficiencies of the primary reference with the knowledge generally available to one ordinary skill in the art to show that the differences between Applicant's invention and the prior art are such that they would have been modifications that were *prima facie* obvious to the skilled artisan. It is noted that the claimed invention is not required to be expressly suggested in its entirety by any one or all of the references cited under 35 U.S.C. 103(a). Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

For these reasons, and those already made of record at pages 3-5 of the previous Office Action dated April 19, 2006, of which such reasons are incorporated herein by reference, rejection of claims 1-7, 9-11, 13-16, & 18 remain proper and is **maintained**.

Conclusion

No claims of the present application are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is (571)-272-3099. The examiner can normally be reached on Monday-Friday (8:30 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili
Patent Examiner
Art Unit 1614

April 13, 2007

LDR
23 APRIL 2007

Ardin H. Marschel 4/23/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER